

JUN-23-2004 14:09 NIXON, PERBODY 18TH

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FAX

To:	Company	Fax #:	Telephone #:
1) Examiner Anand U. Desai, Ph.D.	USPTO	571-273-0947	571-272-0947
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<p>Comments:</p> <p style="text-align: right;"> ENTERED Nixon Peabody LLP JUN 16 2004 FILL 19603/3296 OKI <i>[Signature]</i> </p>			

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PAGE 1/4 * RCVD AT 6/23/2004 2:01:56 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/26 * DNIS:2730947 * CSID:585 263 1600 * DURATION (mm:ss):02:42

PAGE 2/5 * RCVD AT 6/25/2004 10:11:00 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/3 * DNIS:8729306 * CSID:703 305 7401 * DURATION (mm:ss):02:46

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PATENT RECEIVED
Docket No.: 19603/3296 (CRF D-2098) CENTRAL FAX CENTER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 25 2004

Applicants	:	Bogdanove et al.)	Examiner:
)	A. Desai
Serial No.	:	09/596,784)	
)	Art Unit:
Cnfrm. No.	:	3745)	1653
)	
Filed	:	June 19, 2000)	
)	
For	:	HYPERSENSITIVE RESPONSE ELICITOR)	
		FROM <i>ERWINIA AMYLOVORA</i> , ITS USE,)	
		AND ENCODING GENE)	

OFFICIAL

REQUEST FOR RECONSIDERATION

Mail Stop AF
Commissioner for Patents
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Dear Sir:

In response to the May 20, 2004, outstanding office action, reconsideration is respectfully requested.

Initially, applicants would like to thank Examiner Desai for the courtesy extended to the undersigned attorney during telephone conferences on June 8 and June 15, 2004. During the phone conferences, it was agreed that the objections and the provisional rejection identified in the outstanding office action were improper and will be withdrawn upon filing of this request for reconsideration.

The objection to claims 18 and 20-28 is improper because claim 17—from which the objected claims ultimately depend—is allowable for the reasons noted below. The objection to claims 18 and 20-28 should therefore be withdrawn.

The objection to claim 39 is improper. Claim 39 depends from Claim 38, which recites a composition comprising two components (i.e., protein and carrier). Claim 39 further limits the composition of claim 38 by reciting a third component (i.e., an additive). Thus, claim 39 is a proper dependent claim, and the objection to claim 39 should therefore be withdrawn.

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Serial No. 09/596,784

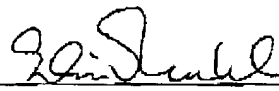
- 2 -

The provisional rejection of claims 17, 19, 38, and 39 as being unpatentable under the judicially created doctrine of obviousness-type double patenting rejection over claims 1, 93, and 94 of copending Application No. 09/879,248 (US 2002/0062500 A1) should be withdrawn. Although applicants disagree with the merits of this provisional rejection, for the reasons noted in the response filed on January 26, 2004, this rejection should nevertheless be withdrawn because the provisional rejection is the only remaining rejection of the claimed subject matter. *See Manual of Patent Examining Procedure* § 804 at pages 800-19 (August 2001).

In view of all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Date: June 16, 2004


Edwin V. Merkel
Registration No. 40,087

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June 16, 2004


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